

Transmittal Memorandum

TO : Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

FROM : Martin E. Hsia, Esq.

DATE : October 18, 2005

RE : Serial No.: 78/475,098
Filed: August 27, 2004
Mark: "CABANA BAR & CASINO" in a design
Opposer: Venture Out Properties LLC
Applicant: Wynn Resorts Holdings, LLC

We are sending you the following:

ORIG.	COPIES	DATED	DESCRIPTION
2		10/18/05	Notice of Opposition
1		10/18/05	Filing Fee (\$300.00)
1		10/18/05	Postcard receipt of Notice of Opposition and Filing Fee

- ☐ For your information
☐ For your files
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☐ Per our conversation
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☐ Are returned herewith

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as noted below & return
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☐ For distribution
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REMARKS:



10-21-2005

U.S. Patent & TMOc/TM Mail Rcpt Dt. #64

C S

Cades Schutte Building
1000 Bishop Street, Suite 1200
Honolulu, Hawaii 96813
Tel: 808.521-9200
Fax: 808.521-9210
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Kona Office
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**IN THE UNITED STATES PATENT & TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Trademark Application Serial No. 78/475,098
Filed on August 27, 2004
For the mark "CABANA BAR & CASINO" and design
Published in the Official Gazette on June 21, 2005, at Page TM 1016

VENTURE OUT PROPERTIES LLC,)	
)	
Opposer,)	
)	Opposition No. _____
v.)	
)	
WYNN RESORTS HOLDINGS, LLC,)	
)	
Applicant.)	
_____)	

NOTICE OF OPPOSITION

VENTURE OUT PROPERTIES LLC, a California limited liability company ("Opposer"), whose mailing address is 177 Post Street, Suite 910, San Francisco, California 94108, believes it will be damaged by the registration of the mark "CABANA BAR & CASINO" and design shown in Application Serial No. 78/475,098 covering "casino services" in International Class 41 (the "Application"), filed on August 27, 2004 in the name of WYNN RESORTS HOLDINGS, LLC, a Nevada limited liability company located and doing business at 3131 Las Vegas Boulevard South, Las Vegas, Nevada 89109 ("Applicant" or "Wynn Resorts"), and hereby opposes the Application on the following grounds:

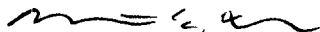
10/27/2005 GTHQMAS2 00000044 78475098

01 FC:6402

300.00 OP

CERTIFICATION OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as U.S. first class mail in an envelope addressed to: Commissioner for Trademarks, P.O. Box 1451, Alexandria, Virginia 22313-1451, on October 18, 2005.



MARTIN E. HSIA, Reg. No. 32,471

1. Opposer is the owner and operator of a hotel located in Honolulu, Hawaii, and has provided various goods and services in connection with the hotel under the mark "CABANA" (the "Cabana Mark").

2. On or about May 5, 2005, Opposer was assigned all right, title and interest in and to the Cabana Mark, together with the goodwill of the business associated therewith and the right to sue for any past infringement, by Venture Out RV Centers, Inc. and The Cabana at Waikiki, LLC, which were entities related to Opposer that provided goods and services in connection with the hotel under the Cabana Mark since at least as early as May 1999.

3. Opposer and its predecessors have for many years advertised, sold, and provided hotel services under the Cabana Mark in the United States. Opposer has acquired and developed an exceedingly valuable goodwill with respect to its Cabana Mark.

4. By virtue of its efforts, including but not limited to the expenditure of considerable sums for advertising and promotional activities, and by virtue of the excellence of its hotel services, Opposer has gained for its Cabana Mark a most valuable reputation.

5. Opposer's Cabana Mark is famous under U.S.C. § 1125(c)(1).

6. Opposer's Cabana Mark is famous as to hotel services under U.S.C. § 1125(c)(1).

7. Since at least as early as May 1999, Opposer, through its predecessors in interest, has had extensive, exclusive, and continued use of the Cabana Mark.

8. On February 7, 2005, Opposer filed an application with the U.S. Patent and Trademark Office (the "Office"), to register the Cabana Mark for "hotel services" in International Class 43.

9. On or about September 7, 2005, the Office issued a non-final action in Opposer's application serial no. 76/630,391 (the "Office Action"), which notified Opposer that registration may be refused in view of, among other things, the prior pending applications of Applicant Wynn Resorts including Application Serial Nos. 78/475,098, 78/475,092, 76/597,835, and 76/597,834.

10. The subject Application Serial No. 78/475,098 was filed by Applicant on or about August 27, 2004, for the mark "CABANA BAR & CASINO" in a design ("Applicant's Mark").

11. The Application of Wynn Resorts covers "casino services" in International Class 41 ("Applicant's Services").

12. "Casino services" are related to "hotel services".

13. The Application of Wynn Resorts seeks registration of the mark "CABANA BAR & CASINO" in a design.

14. As indicated in the Application, Applicant has disclaimed any exclusive rights to use the portion of its mark consisting of "BAR & CASINO".

15. Attached hereto as Exhibit "A" is a true and correct copy of a printout from the U.S. Patent and Trademark Office website showing Applicant's Mark, which consists of the stylized word "CABANA" on top of the stylized words "BAR & CASINO" in a smaller font than the word "CABANA".

16. Applicant's Mark deemphasizes the words "BAR & CASINO".

17. The dominant portion of Applicant's Mark is "CABANA".

18. The dominant portion of Applicant's Mark is identical to Opposer's Cabana Mark.

19. Applicant's Mark so closely resembles Opposer's Cabana Mark, that if used in connection with the applied-for services, it would be likely to cause confusion, mistake and/or deception of the relevant trade and public, to the damage of Opposer.

20. The use and registration of Applicant's Mark, as indicated above, would result in confusion, mistake and/or deception as to the source or origin of Applicant's Services, leading consumers to believe that they are somehow affiliated with, approved, sponsored, or licensed by Opposer.

21. A likelihood of confusion exists under Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), between Opposer's Cabana Mark and Applicant's mark, "CABANA BAR & CASINO" in a design.

22. If Applicant is permitted to use and register Applicant's Mark for the services specified in the Application, confusion in trade, resulting in irreparable damage and injury to Opposer, inevitably would result by reason of the similarity between Applicant's and Opposer's marks and the services sold and provided thereunder. Any defect, objection, or fault found with services marketed under Applicant's mark, "CABANA BAR & CASINO" in a design, would reflect on, and injure, the reputation Opposer has established for services sold under its Cabana Mark.

23. If Applicant is granted the registration herein opposed, Applicant would obtain a *prima facie* exclusive right to use the mark set forth in the Application. Such registration would become a source of damage and injury to Opposer through the generation of confusion, mistake and/or deception, the dilution of Opposer's mark, and the diminution of Opposer's ability to control the quality of services sold thereunder.

24. Moreover, such registration would run contrary to the requirement that all doubts as to the likelihood of confusion must be resolved in favor of Opposer, and against Applicant, who has a legal duty to select a mark totally dissimilar to marks already in use.

25. Use of Applicant's Mark in connection with the services listed in the Application, would be likely to dilute Opposer's Cabana Mark.

26. On information and belief, the services covered by the Application of Wynn Resorts are or will be offered to the same class of purchasers and users who purchase and use the services in connection with which Opposer has used and is using its Cabana Mark.

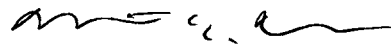
27. There is no issue as to priority. As shown by Opposer's application Serial No. 76/630,391 identified above, Opposer has been using the Cabana Mark since at least as early as May 1999.

28. The Application of Wynn Resorts was filed on August 27, 2004, on the basis of an intent-to-use Applicant's Mark.

WHEREFORE, Opposer prays that this Opposition be sustained, that the Application be refused, and that the mark applied for therein be refused registration. A duplicate copy of this Notice of Opposition and the fee required in 37 C.F.R. § 2.6(a)(17) are enclosed.

DATED: Honolulu, Hawaii, October 18, 2005.

Respectfully submitted,



Martin E. Hsia, Reg. No. 32,471
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A Limited Liability Law Partnership
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Attorney for
VENTURE OUT PROPERTIES LLC

EXHIBIT “A”



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TARR Status	ASSIGN Status	TDR Status	TTAB Status
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CABANA
BAR & CASINO

Word Mark	CABANA BAR & CASINO
Goods and Services	IC 041. US 100 101 107. G & S: casino services
Mark Drawing Code	(5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM
Serial Number	78475098
Filing Date	August 27, 2004
Current Filing Basis	1B
Original Filing Basis	1B
Published for Opposition	June 21, 2005
Owner	(APPLICANT) Wynn Resorts Holdings, LLC Valvino Lamore, LLC a Nevada limited liability company, sole member; Wynn Resorts, Limited a Nevada corporation, sole member of Valvino Lamore, LLC LTD LIAB CO NEVADA 3131 Las Vegas Blvd. South Las Vegas NEVADA 89109
Attorney of Record	Lauri S. Thompson, Esq.
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "BAR & CASINO" APART FROM THE MARK AS SHOWN
Description of Mark	The mark consists of the stylized word CABANA on top of the stylized words BAR & CASINO.
Type of Mark	SERVICE MARK

EXHIBIT A

Register PRINCIPAL
Live/Dead Indicator LIVE

TESS HOME	NEW USER	STRUCTURED	FREE FORM	BROWSE DICT	SEARCH OG	TOP	HELP	PREV LIST	CURR LIST
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This page was generated by the TARR system on 2005-10-03 15:32:36 ET

Serial Number: 78475098

Registration Number: (NOT AVAILABLE)

Mark



(words only): CABANA BAR & CASINO

Standard Character claim: No

Current Status: An opposition is now pending at the Trademark Trial and Appeal Board.

Date of Status: 2005-08-05

Filing Date: 2004-08-27

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: LAW OFFICE 106

Attorney Assigned:
KIM SOPHIA SUJIN Employee Location

Current Location: 650 -Publication And Issue Section

Date In Location: 2005-05-10

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Wynn Resorts Holdings, LLC

Composed Of:
Valvino Lamore, LLC a Nevada limited liability company, sole member; Wynn Resorts, Limited a Nevada corporation, sole member of Valvino Lamore, LLC

Address:

Wynn Resorts Holdings, LLC
3131 Las Vegas Blvd. South
Las Vegas, NV 89109
United States

Legal Entity Type: Ltd Liab Co**State or Country Where Organized:** Nevada

GOODS AND/OR SERVICES

International Class: 041

casino services

First Use Date: (DATE NOT AVAILABLE)**First Use in Commerce Date:** (DATE NOT AVAILABLE)**Basis:** 1(b)

ADDITIONAL INFORMATION

Disclaimer: "BAR & CASINO"**Description of Mark:** The mark consists of the stylized word CABANA on top of the stylized words BAR & CASINO.

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

2005-08-05 - Opposition instituted for Proceeding

2005-07-11 - Extension Of Time To Oppose Received

2005-06-21 - Published for opposition

2005-06-01 - Notice of publication

2005-03-07 - Law Office Publication Review Completed

2005-03-07 - Assigned To LIE

2005-02-11 - Assigned To LIE

2005-02-09 - Approved for Pub - Principal Register (Initial exam)

2005-02-09 - EXAMINERS AMENDMENT E-MAILED

2005-02-09 - Examiners Amendment - Written

2005-01-28 - Non-final action e-mailed

2005-01-28 - Non-Final Action Written

2005-01-19 - Case file assigned to examining attorney

2004-09-03 - New Application Entered In Tram

CORRESPONDENCE INFORMATION

Correspondent

Lauri S. Thompson, Esq. (Attorney of record)

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